



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 19, 1996

Ms. Tamara Armstrong
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR96-1186

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 40439.

The Travis County District Attorney's Office received a request for "access to any memoranda, documents or reports reflecting statistical compilations and statistical analyses of cases handled and/or disposed (by dismissal, plea or trial) by the Travis County District Attorney's Office for the years 1990 through 1996." The requestor also seeks "any written comments or evaluations of the statistical information requested" and access to information concerning the "Appropriate Punishment Team." You contend that the requested information is protected from required public disclosure under sections 552.101, 552.103, 552.108, and 552.111 of the Government Code. You also are withholding grand jury records which you contend are not subject to the Open Records Act. You have submitted a representative sample of the requested information for our review.¹

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office are truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

You contend that the information contained in Exhibit A of the submitted documents is excepted from required public disclosure by section 552.101 of the Government Code in conjunction with various statutes. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

Category 1 of Exhibit A contains statistical information compiled by the death review team. You state that although the statistical information itself is public, the accompanying information is confidential under section 264.511 of the Family Code. Subchapter F of chapter 264 concerns the review and investigation of child fatalities. Section 264.511 states, in pertinent part:

(a) Information and records acquired by the committee or by a review team in the exercise of its purpose and duties under this subchapter are confidential and exempt from disclosure under the open records law, Chapter 552, Government Code, and may only be disclosed as necessary to carry out the committee's or review team's purpose and duties.

(b) A report of the committee or of a review team or a statistical compilation of data reports is a public record subject to the open records law, Chapter 552, Government Code, as if the committee or review team were a governmental body under that chapter, if the report or statistical compilation does not contain any information that would permit the identification of an individual.

Having reviewed the contents of Category 1 of Exhibit A, we agree that this information is confidential under section 264.511 of the Family Code and must be withheld from public disclosure pursuant to section 552.101 of the Government Code.

Category 2 of Exhibit A consists of records of juvenile cases which you contend are confidential pursuant to section 58.007 of the Family Code.² Records of juvenile cases concerning conduct that occurred prior to January 1, 1996 are governed by former section 51.14 of the Family Code which provides, in pertinent part:

(d) Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a

²The section you cite was added by the Seventy-fourth legislature. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 53, 1995 Tex. Sess. Law Serv. 2517. However, this section applies only to conduct that occurs on or after January 1, 1996. *Id.* § 106, 1995 Tex. Sess. Law Serv. at 2591. "Conduct that occurs before January 1, 1996, is governed by the law in effect at the time the conduct occurred, and that law is continued in effect for that purpose." *Id.*

criminal court for prosecution, the law-enforcement files and records [concerning a child] are not open to public inspection nor may their contents be disclosed to the public.

Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 3, 1993 Tex. Gen. Laws 1850, 1852, *repealed by* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Sess. Law Serv. 2517, 2590. The Seventy-fourth Legislature replaced these provisions concerning juvenile criminal records with section 58.007 of the Family Code, which provides, in part:

(b) except as provided by Article 15.27, Code of Criminal Procedure, the records and files of a juvenile court, a clerk of court, a juvenile probation department, or a prosecuting attorney relating to a child who is a party to a proceeding under this title are open to inspection only by:

(1) the judge, probation officers, and professional staff or consultants of the juvenile court;

(2) a juvenile justice agency as that term is defined by Section 58.101;

(3) an attorney for a party to the proceeding;

(4) a public or private agency or institution providing supervision of the child by arrangement of the juvenile court, or having custody of the child under juvenile court order; or

(5) with leave of the juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

The plain language of section 58.007 makes confidential the records and files of a juvenile court, a court clerk, a juvenile probation department, and a prosecuting attorney relating to a child. *See* Open Records Decision No. 644 (1996). Category 2 of Exhibit A contains information regarding juvenile cases relating to offenses that occurred both prior to and after January 1, 1996. We do not understand that any of the exceptions to former section 51.14(d) apply here. *See* Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 3, 1993 Tex. Gen. Laws 1850, 1852 (*repealed* 1995) (former Fam. Code § 51.14(d)(1), (2), (3)). Further, you state that the exceptions set forth in section 58.007(b) are not applicable in this case. Consequently, the information regarding specific juvenile cases relating to offenses that occurred prior to January 1, 1996 is confidential under former section 51.14(d) and the information regarding specific juvenile cases relating to offenses that occurred after January 1, 1996 is confidential under section 58.007(b) and, in either case, these two classes of information must be withheld from public disclosure under section

552.101 of the Government Code. However, category 2 of Exhibit A also contains some general information not related to any specific juvenile cases. This information may not be withheld under section 552.101 of the Government Code. We have tagged the information which must be released to the requestor.

Category 3 of Exhibit A consists of records from the Texas Department of Protective and Regulatory Services ("DPRS") which relate to juvenile offenders who are also victims in child abuse cases. You contend these records are confidential pursuant to section 261.201 of the Family Code. Section 261.201(a) provides:

The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect [of a child] made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

We conclude that section 261.201 is inapplicable to the contents of category 3 of Exhibit A because we do not believe that this information was "used or developed in an investigation under [chapter 261] or in providing services as a result of an investigation." However, as the majority of these records concern specific juvenile cases relating to offenses that occurred both prior to and after January 1, 1996, we believe that most of the records are confidential under either former section 51.14(d) or section 58.007(b) of the Family Code, and consequently, are excepted from public disclosure under section 552.101 of the Government Code. We have tagged several documents which do not relate to any specific juvenile case and which may not be withheld under section 552.101. These tagged documents must be released to the requestor.

With regard to certain grand jury records which may be responsive to the request, you assert that these records are not subject to the Texas Open Records Act. You assert that the grand jury records at issue were "prepared by the foreman of the Travis County Grand Jury, concern grand jury proceedings, and cover matters transpiring before the grand jury." You also submitted an affidavit from an assistant district attorney stating that the information is "in the constructive possession of the Grand Jury[,] . . . prepared by the Grand Jury in the course of performing their duty, or prepared or collected at the express direction of the Grand Jury." The Texas Open Records Act does not apply to

information within the actual or constructive possession of the grand jury. When an individual or entity acts at the direction of a grand jury as the grand jury's agent, information held or collected by the agent is within the grand jury's constructive possession. Open Records Decision No. 513 (1988) at 3. Therefore, we agree that this information is not subject to the Texas Open Records Act and may be withheld from the requestor.

You contend that the information contained in Exhibit B of the submitted documents is excepted from required public disclosure by sections 552.101, 552.103, and 552.108 of the Government Code.³

Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; see *Holmes v. Morales*, 39 Tex. Sup. Ct. J. 781, 1996 WL 325601 (June 14, 1996). We note, however, that information normally found on the front page of an offense report is generally considered public.⁴ *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Exhibit B consists of a "Report of Services" from the Victim Witness Division of the Travis County District Attorney's Office. As we conclude that this report is "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution," we agree that Exhibit B may be withheld from required public disclosure pursuant to section 552.108 of the Government Code.

You contend that the information contained in Exhibit C of the submitted documents is excepted from required public disclosure by section 552.111 of the Government Code. Section 552.111 excepts "[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office concluded that section 552.111 excepts from required public disclosure only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency

³As we rule that the entire contents of Exhibit B may be withheld under section 552.108, we need not address the applicability of sections 552.101 and 552.103 at this time.

⁴The content of the information determines whether it must be released in compliance with *Houston Chronicle*, not its literal location on the first page of an offense report. Open Records Decision No. 127 (1976) contains a summary of the types of information deemed public by *Houston Chronicle*.

personnel as to policy issues. *Id.* at 5. In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.*

Category 1 of Exhibit C is a tabulation from a "Questionnaire for Prosecutors." Statistical summaries of opinion survey results are not excepted from public disclosure by section 552.111. Open Records Decision Nos. 419 (1984), 209 (1978). Thus, category 1 of Exhibit C must be released to the requestor.

You have circled portions of category 2 of Exhibit C, a memorandum dated January 26, 1995 concerning statistics on state jail felonies, which you assert reflects opinions on policy matters. We agree that the portions you seek to withhold consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the Travis County District Attorney's Office and may also be withheld from required public disclosure under section 552.111. We assume that you have released or will release the remaining portions to the requestor.

Category 3 of Exhibit C is a memorandum dated July 21, 1994 which concerns inmate housing options. You assert that this memorandum concerns policy matters on which option to adopt. We agree that portions of this memorandum consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the Travis County District Attorney's Office which may be withheld from required public disclosure under section 552.111. However, other portions are purely factual and may not be withheld under this exception. We have marked the information on this memorandum which may be withheld under section 552.111. The remainder must be released to the requestor.

Category 4 of Exhibit C consists of (1) a memorandum, dated December 8, 1995, from the Executive Coordinator of the Justice and Public Safety Division of the Travis County District Attorney's Office to Judge Bill Aleshire and Judge Joel Bennett, (2) a letter, dated November 27, 1995, from the director of the Office of National Drug Control Policy to Judge Bill Aleshire, and (3) a November 1995 pamphlet entitled, "Break the Cycle: A National Demonstration Project to Enhance Public Safety and Reduce Drug Abuse through Criminal Justice Intervention." Portions of items (1) and (2) consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the Travis County District Attorney's Office which may be withheld from required public disclosure under section 552.111. However, other portions are purely factual and may not be withheld under this exception. We have marked the information on items (1) and (2) which may be withheld under section 552.111. The remainder must be released to the requestor. Item (3) is not an "interagency or intraagency memorandum or letter" and, consequently, may not be excepted from required public disclosure under section 552.111. *Cf.* Open Records Decision No. 435 (1986) (section 552.111 waived by release of information to public). You may not withhold from the requestor the information contained in item (3) of category 4 of Exhibit C.

You have highlighted portions of category 5 of Exhibit C, a memorandum dated August 21, 1995 which concerns the number of trial courts in Travis County. We agree that certain portions of the highlighted information consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the Travis County District Attorney's Office; the other highlighted information is purely factual. We have marked the information which you may withhold under section 552.111. The remainder of this memorandum must be released to the requestor.

Category 6 of Exhibit C is a memorandum, dated October 28, 1992, which concerns the establishment of a special unit in the Travis County District Attorney's Office. The entire document consists of advice, recommendations, opinions, and other material reflecting the policymaking processes of the Travis County District Attorney's Office and, as such, may be withheld from required public disclosure under section 552.111 in its entirety.

You also contend that the information contained in Exhibit I of the submitted documents is excepted from required public disclosure by section 552.111 of the Government Code.

Category 1 of Exhibit I is a letter, dated January 22, 1996, from a member of the Appropriate Punishment Team ("APT") to members of the Austin Police Department concerning the APT Pilot Project. You seek to withhold only a portion of this letter. We agree that certain portions of the highlighted information consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the Travis County District Attorney's Office; the other highlighted information is purely factual. We have marked the information which you may withhold under section 552.111. The remainder of category 1 of Exhibit I must be released to the requestor.

Category 2 of Exhibit I is a cover memorandum, dated November 27, 1995, and a draft "Initial Proposal for APD/APT Membership." You have highlighted certain portions of this memorandum and draft which you contend relates to policy matters. We have marked the portions of the highlighted information in the cover memorandum which we find consists of advice, recommendations, opinions, and other material reflecting the policymaking processes of the Travis County District Attorney's Office. This information may be withheld from required public disclosure under section 552.111. The remainder of this memorandum must be released to the requestor. As for the remaining information, we find that all of the information you have marked consists of advice, recommendations, opinions, and other material reflecting the policymaking processes of the Travis County District Attorney's Office and, as such, may be withheld from required public disclosure under section 552.111 in its entirety.

Category 3 of Exhibit I is an internal memorandum, dated April 18, 1994, concerning APT and state jail felonies. You have highlighted the portions of this document which you seek to withhold under section 552.111. We agree that the portions

you seek to withhold consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the Travis County District Attorney's Office. You may withhold this information from required public disclosure under section 552.111.

Finally, Category 4 of Exhibit I is an internal memorandum, dated October 5, 1995. You have highlighted the portions of this document which you seek to withhold under section 552.111. We agree that the portions you seek to withhold consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the Travis County District Attorney's Office and, therefore, you may withhold this information from required public disclosure under section 552.111.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Todd Reese", with a long horizontal flourish extending to the right.

Todd Reese
Assistant Attorney General
Open Records Division

RTR/rho

Ref.: ID# 40439

Enclosures: Marked documents

cc: Mr. Shane Phelps
P.O. Box 2013-182
Austin, Texas 78768-2013
(w/o enclosures)